

**RECEIVED**

JUL 12 2024

S.C. SUPREME COURT

The Supreme Court of South Carolina

Steven McElrath

v

State S.C.

Appellate:

Case No. 2024-001048

# The Supreme Court of South Carolina

## Appendix

1. Letter to clerk explaining some pages missing from return filed copies with copies re-attached to assure all copies are present.

2. Letter response to clerk submitting in writing reason why the court's determination was improper.

3. Exhibits evidence of material facts labeled as follows:

Exhibits 1A + 1B

Exhibits 2-5

Exhibit A Summons from PCR application demanding relief be granted if state failed to respond within (30) days pursuant Rule 12.

4. Certificate of Service of Copies mailed to all parties, Notarized.

# The Supreme Court of South Carolina

Steven c. McElrath #328413  
Ridgeland C.I. / GB-7  
P.O. Box 2039  
Ridgeland, S.C. 29936

July 2, 2024

Patricia A. Howard  
Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Steven c. McElrath V. State  
Appellate Case No. 2024-001048

Dear Clerk of Court,

I am writing in response to your letter dated June 24, 2024, Received by mail Signed for by me on June 27, 2024.

Since the order of the Circuit Court determined that this action is barred as being Successive and/or as

page 1 of 10

being untimely under the Statute of limitations, Rule 243(c), SCACR, Requires that I provide a written explanation as to why this determination was improper.

This determination was improper for the following Facts and Reasons:

The applicant, herein the appellant filed his PCR application Pursuant S.C. Code Ann § 17-27-45(c), Filing Procedures for Post Conviction Relief Applications: "If an applicant contends that there is evidence of Material Fact not previously presented and heard that requires vacation of the Conviction or Sentence, the application must be filed under this Chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The appellant was deprived of his Constitutional Right to effective Counsel and deprived of his Constitutional Right to Due process were he discovered he was without the aid and assistance of Counsel during the direct appeal process, Ineffective Assistance of Counsel, and as result amounting to a **Constructive Denial of Counsel**. Appellants entire direct appeal was Sabotaged.

On July 1, 2022 the appellant wrote to the S.C. Court of Appeals requesting copies of all material from his case. Response was received on July 8, 2022 and the appellate discovered letter correspondance's between his Plea Counsel Scott D. Robinson and Court of Appeals which were **NEVER** made available to the appellant and **NEVER** seen before July 8, 2022 (See Exhibit 1A).

The appellant was **NEVER** included in the Chain of Communications as displayed by each letter (see Exhibits 2-5).

Finding **NO BRIEFS** included, the appellant then wrote again on July 19, 2022 requesting all material and Briefs filed by my then Counsel Scott D. Robinson in this case. Response was received on July 22, 2022 and the Clerk of Court stated, "**NO BRIEFS WERE FILED IN THIS CASE.**" (See Exhibits 1B).

The appellant had **NO KNOWLEDGE** of the existance of these letters prior to the dates of July 8, 2022, and July 22, 2022, as they were mail correspondences with instruction to Counsel regarding appellants direct appeal and No Copies were ever made available to the appellant prior to these dates as he also was excluded from the Chain of Communications as evidenced by the addressing of these letters.

Upon discovery the appellant then filed his PCR application in this matter Pursuant S.C. Code Ann § 17-27-45(c) within one (1) year of this actual discovery Filed with the Anderson Clerk of Court on July 3, 2023

The State failed to make its response until the date of March 12, 2024 over two Hundred (200) days past the Limit of Sixty (60) days Set forth in Rule 12 and Made NO Just Cause Showing for their delay.

Furthermore, the applicant, herein appellant by attached Summons with his PCR Sought For ALL relief demanded in the Post Conviction Relief Application to be granted as a result of State's Conceed Should They fail to respond within Thirty (30) days in Compliance to Rule 12. The State Failed to respond taking longer than two Hundred (200) days with no Justifiable Cause, (See Exhibit A) Summons filed with his PCR on July 3, 2023.

## Ineffective Assistance and Constructive Denial of Counsel

Counsel Scott D. Robinson abandoned the appellant in the appeal process having done nothing but File a Notice of appeal, "NO BRIEFS WERE FILED IN THIS CASE" (See Exhibit 1 B)

(See Exhibit 2), Counsel Scott D. Robinson was instructed by the Clerk that Rule 203(d)(1)(b) required him to submit in writing explanation showing there is an issue which can be reviewed on appeal: (Rule 203(d)(1)(b) SCACR)

(See Exhibit 3) Scott D. Robinson's responsal letter stating, "I do not feel there is an issue which can be reviewed on appeal." Here (Exhibit 3), A No Merits letter of sorts similar to that found in Anders v. California 386 U.S. 738 (1967) please view. And (Exhibit 1B) **NO BRIEFS WERE FILED IN THIS CASE.**

Counsel Scott D. Robinson abandoned the appellant in the appeal process and he was left without the aid and assistance of Counsel. Counsel was not acting as Counsel and failed to submit one arguable issue prior to withdrawing as Counsel, and filed only the Notice of Appeal with NO BRIEFS or issues submitted to be reviewed on appeal. Counsel violated Rule 203(d)(1)(b), SCACR, and failed to provide anything other than his "No Merits" letter of sorts (See Exhibit 3).

(See Exhibit 4) Counsel was instructed to send copies of his letter to his client (the appellant) along with a statement that he had twenty (20) days to submit in writing any arguable basis that there was an issue preserved for appeal

(See Exhibit 5) Incorrectly addressed Letter Notice bearing the SCDC ID Number belonging to a different Inmate and Not Counsels Client Steven C. McElrath, herein the appellant.

In this Error Counsel was Ineffective resulting in appellant **NEVER** Receiving Letter Notice that he had twenty (20) days timeframe to respond to the Clerks Instructions to Submit his own arguable basis that there were issues preserved for appeal, Since Counsel Failed to do so - Shifting the burden of appeal upon the appellant with No aid or Assistance from Counsel. Appellant Never Received Counsel Scott D. Robinsons Letter Notice See (Exhibit 5) bearing the appellants Name but a different Inmates ID Number and appellant would Not have legally been allowed to receive this improperly addressed letter resulting in his Appeal being Sabotaged by Counsel and right to appeal Forfited, as he Could Not have been able to respond.

The Appellant **ONLY RECEIVED** Notice From the S.C. Court of Appeals of the dismissal of his appeal.

The Appellant **NEVER** had any knowledge of these mail Correspondences prior to the dates of July 8, 2022, and July 22, 2022 And Could Not Have Raised these Issues in the original Amended PCR Application.

Furthermore, Pursuant Rule 71.1(d) SCRPC, Appointed PCR Counsel under the Mandatory Language of the Word "SHALL" would have been obligated to assure ALL Available grounds for relief were included and "SHALL" Amend the application if necessary.

However himself was Never able to present this as it was Mail Correspondence between the Appeal Court and appellants Counsel and the appellant was Never included in the Chain of Communication. Counsel must have been unable to himself obtain these Copies when representing the appellant in PCR, Counsel George Sands.

Appellants appeal resulted in dismissal due to the ineffective assistance of Counsel by Scott D. Robinson and was without his aid and assistance of Counsel and thus prejudiced amounting in a **Constructive Denial of Counsel**. The appellant Never had opportunity to request other Counsel Nor the Chance to Submit his own issues for appeal Due to Counsel's Scott Robinson incorrectly addressed letter Notice (see Exhibit 5) bearing the SCDC ID Number of a different Inmate, Error So unProfessional that it Sabotaged the appellants appeal. The appellant would Never have been allowed to receive legal mail bearing the SCDC ID number of a different Inmate.

Because of Counsel Scott D. Robinsons Errors and No aid or Assistance amounting to a Constructive Denial of Counsel, the appellant was deprived of Effective Counsel Representation his Constitutional Right and his Constitutional Right to Due process.

These issues were Not discovered by appellants PCR Counsel at the time George Sands, The Appellant Never received these Mail Correspondences, Exhibits of Material Facts that require the attention of this honorable Court in the best intrest of Justice and maintaining the Constitutional and civil Rights of the appellant in this matter which was Not discovered or made available to the appellant until the dates of July 8, 2022, and July 22, 2022. At discovery the applicant did file his PCR to address this matter within one (1) year Pursuant S.C. Code Ann § 17-27-45(c) within one year of actual discovery.

The Applicant Seeks Not a New or Successive PCR but a Complete Full Bite adjudication and dispensing of Justice in the original Amended PCR And asks this Honorable Court to Sua Sponte and Liberally Construe These issues and grant the relief appellant is entitled to.

That Concludes now my explanation in writing why the Courts determination that this action is barred as being Successive and/or as being untimely under Statute of limitations, was an improper determination by the Court with all due respect.

Appellant would ask this Court to decline to determine to prohibit the appellant from filing post Conviction application, habeas Corpus action, or any other action, motion or petition in The Circuit Court Challenging this Conviction and Sentence (including Motion under Rule 29, SCRPC, without obtaining permission of this Court to do so because Appellant brings Non Frivolous issues forth in this action and has yet to receive his one full bite adjudication on all available grounds and issues for relief.

Applicant failed to Comprehend and understand the Sentence and Consequences of his guilty plea as demonstrated in the Brief in Support of attached to his PCR Applications Response to Conditional order of dismissal. It was Stated the Charges carried up to 30 years but Never made clear or understood that they carry beyond 30 years or appellant would not have plead guilty.

Further the applicant made a Showing by transcript how this was Vague and unclear to him,

In addition applicant Plead guilty for mercy before the Court and was under the instruction this was the case. But was Never informed the State was Seeking the Maximum or that it could exceed 30 years. Applicant appellant herein would Never plead Guilty under Such Circumstances.

At No time Can the Plea Record display what elements of the charges were to which the appellant was pleading guilty to. Appellant had No understanding of this (The elements of the charges) or he would Never have plead guilty to both kidnapping and CSC 1st degree as kidnapping is an element of CSC 1st degree. Pursuant Rule 71.1(d) PCR Counsel George Sands Failed to assure All available grounds for relief were raised and done so properly to be heard. Applicant could not have moved on his own because he was prohibited under hybrid representation rule.

Appellant asks this Court to Reopen and allow for appointment of Counsel and proper presentation and hearing on these issues or to Rule upon them here. Also asking forgiveness for Sloppy writing as appellant is faced with Nerve problems effecting his hands. Thank you Sincerely.

Date: 6- - 2024

page 10 of 10

Steva C. McElvato



**RECEIVED**  
JUL 12 2024  
S.C. SUPREME COURT

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

July 08, 2022

*(Exhibit 1A)*

Steven McElrath  
328413/GB-7  
Ridgeland Correctional Institution  
PO Box 2039  
Ridgeland, SC 29936

Re: The State v. McElrath, Steven  
Appellate Case No. 2008-092326

Dear Mr. McElrath:

We received your letter dated July 1, 2022, requesting copies of the above matter. In response, we have enclosed the copies you requested.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.  
CLERK



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
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FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

July 22, 2022

(Exhibit 1B)

Steven McElrath, #328413  
Ridgeland Correctional Institution  
P.O. Box 2039  
Ridgeland SC 29936

Re: The State v. McElrath, Steven  
Appellate Case No. 2008-092326

Dear Mr. McElrath:

The Court has received your letters dated July 1, and July 19, 2022, requesting documents from the above-mentioned case. In response, enclosed is a copy of the notice of appeal filed by Scott D. Robinson, Esquire. Also enclosed is correspondence Mr. Robinson submitted June 20, 2008, and this Court's order of dismissal dated September 23, 2008. No briefs were filed in this case.

Very truly yours,

*V. Claire Allen*

CLERK



RECEIVED

JUN 12 2008

ATTORNEY GENERAL'S  
OFFICE

# The South Carolina Court of Appeals

KENNETH A. RICHSTAD  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

June 10, 2008

(Exhibit 2)

Scott David Robinson, Esquire  
Law Office of Scott D. Robinson  
P.O. Box 10042  
Greenville, SC 29603

Re: The State v. McElrath, Steven

Dear Mr. Robinson:

We have received your Notice of Appeal in the case noted above. Since this is an appeal from a guilty plea, Rule 203(d)(1)(B) SCACR, requires you to provide "a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issues(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal". Failure to make a sufficient showing may result in dismissal of this appeal.

The explanation should be served and filed within fourteen (14) days of the date of this letter.

Please be advised the time limits for perfecting this appeal are not held in abeyance.

Very truly yours,

*Kenneth A. Richstad*

CLERK

KAR/mm

cc: Chief Appellate Defender Joseph L. Savitz, III  
Assistant Deputy Attorney General Salley W. Elliott  
Kristin W. Reeves, Esquire

LAW OFFICES OF SCOTT D. ROBINSON

101 LAVINIA AVENUE  
GREENVILLE, SC 29601  
864-271-6940 (PHONE)  
864-271-6941 (FAX)

(Exhibit 3)

June 20, 2008

South Carolina Court of Appeals  
Attn: Kenneth A. Richstad  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED

JUN 26 2008

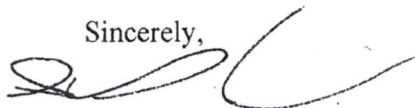
SC Court of Appeals

RE: The State vs. McElrath, Steven

I am responding to your letter of June 10, 2008 and pursuant to Rule 203 (d)(1) (B) SCACR, I do not feel there is an issue which can be reviewed on appeal.

Thank you for your attention on this matter. If you have any questions please call my office.

Sincerely,



Scott D. Robinson  
Sm/asst

Cc: Chief Appellate Defender Joseph L. Savitz, III  
Assistant Deputy Attorney General Salley W. Elliot  
Kristin W. Reeves, Esquire



## The South Carolina Court of Appeals

KENNETH A. RICHSTAD  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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FAX: (803) 734-1839  
www.sccourts.org

August 15, 2008

(Exhibit 4)

Scott David Robinson, Esquire  
Law Office of Scott D. Robinson  
P.O. Box 10042  
Greenville, SC 29603

Re: The State v. McElrath, Steven

Dear Mr. Robinson:

I have received your letter of August 7, 2008.

Please forward your letter to your client, along with a statement that he has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide him with the Court's address:

South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this office. Thank you very much.

Very truly yours,

CLERK

KAR/mm

cc: Chief Appellate Defender Joseph L. Savitz, III  
Assistant Deputy Attorney General Salley W. Elliott

**LAW OFFICES OF SCOTT D. ROBINSON**

101 LAVINIA AVENUE  
GREENVILLE, SC 29601  
864-271-6940 (PHONE)  
864-271-6941 (FAX)

August 20, 2008

Steven McElrath, SCDC ID: 00307275  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

(Exhibit 5)

RE: State vs. Steven McElrath

Dear Steven:

Please find enclosed the letter received from the South Carolina Court of Appeals on the above referenced matter. Please note there is a 20-day timeframe that you have to respond by.

If you have any questions please call my office.

Sincerely,

*S/Scott D. Robinson*  
Scott D. Robinson

Sm/asst

enclosure

(Exhibit A)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
County of Anderson

Steven McElrath

CHA

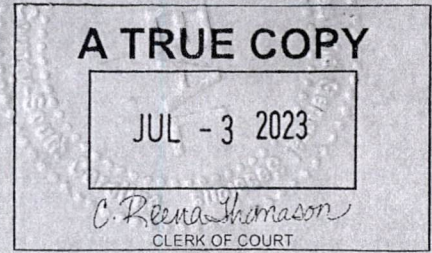
Applicant

vs

Summons

State of South Carolina

Respondent(s)



To: The Respondent(s):

YOU ARE HEREBY Summoned and required to answer the Post-Conviction Relief Application herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Post-conviction Relief Application upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the PCR, Judgment by default will be rendered against you for the relief demanded in the Post-conviction Relief Application.

S.C.

Dated 6-28 - 2023

*Steven McElrath*

Steven McElrath

P.O. Box 2039

Ridgeland, S.C. 29936

The Supreme Court of South Carolina

Steven C. McElrath #328413

R.C.I. / GB-7

P.O. Box 2039

Ridgeland, S.C. 29936

July 2, 2024

Patricia A Howard

Clerk of Court

P.O. Box 11330

Columbia, S.C. 29211

Re: Steven C. McElrath v. State

Appellate Case No. 2024-001048

Dear Clerk,

please forgive my sloppy hand I'm suffering with some nerve issues and am in process of getting medical care and further evaluation and had no one to type this for me in such short time.

I noticed missing from the filed copies was a page from what's labeled Applicant's Response to respondent's Request for dismissal page 2 of 2 is missing here. please note copies are front and back I included again.

Stu McElrath

29 MAY 29 AM 11:09:40  
Anderson, SC 0000000000

STATE OF SOUTH CAROLINA  
County of Anderson

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT

Steven C. McElrath # 328413

CASE NO. 2023-CP-04-01390

Applicant,

v.

BRIEF IN SUPPORT OF

State of South Carolina

Respondent.

Copies are  
Front and  
Back on  
A11

Now Comes the Applicant, Steven C. McElrath before this  
Honorable Court and Moves to overcome Conditional order  
of Dismissal

The Applicant contends that this matter before the Court  
is "NOT" a Successive PCR application, but is a request for  
an evidentiary hearing, Not for a new or Successive PCR hearing but  
for a Complete "FULL BITE" adjudication on "ALL" available  
grounds for relief.

Applicant raises ground(s) that are Non-Frivolous  
and are supported by Submitted Exhibits which are  
Evidence of Material Fact and demonstrate a clear  
violation(s) of the applicant's Constitutional rights as  
Submitted in this PCR application.

This matter before the Court is "NOT" a Successive PCR application, is "NOT" Procedurally barred as untimely, is "NOT" barred by the Statute of Limitations, is "NOT" Successive to applicants previous PCR applications, is "NOT" barred by the doctrine of res judicata, and applicant is "NOT" failing to Comply with the Uniform PCR Procedures Act, S.C. Code Ann § 17-27-10 et seq (2014), as the State erroneously contends, as the applicant will demonstrate in the following with Exhibits Submitted in his PCR application "Evidence of Material facts", and clearly support applicants claims and demonstrate clear Constitutional Rights violations.

The applicant overcomes this Conditional order of Dismissal by the following:

Summary Dismissal Based on Successiveness

Pursuant to S.C. Code Ann § 17-27-90, Successive PCR applications are barred Unless an applicant can indicate a "Sufficient Reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E. 2d 392 (1991). In Aice, the S.C. Supreme Court held that PCR rules

"Contemplate an adjudication on the merits of the original petition, "one Bite at the apple as it were." Id. at 452, 409 S.E. 2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E. 2d 118, 119 (1989)). The Court also noted, "[E]tinality must be realized at some point in order to achieve a Semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E. 2d at 394.

Along this line of thought, Applicant contends that he was deprived of having "ALL" Available grounds for relief raised and adjudicated and has Submitted Non-frivolous grounds Supported by Exhibits of evidence of material fact, Clear Constitutional rights violations included in his application.

"The State affirms" applicants Claims were known and easily could have and should have been raised in the original PCR action. See: Exhibit page 8 of 11 Conditional order of Dismissal.

Pursuant Gamble v. State (above referenced), 298 S.C. 176, 178, 379 S.E. 2d 118, 119 (1989). In light of these known Claims the State affirms existed and could have and should have been raised in the initial PCR action but was not, there then fails to be achieved any Semblance of effectiveness in dispensing justice!

In fact the State is attempting to disregard and turn their head to the effective dispensing of Justice by refusing to honor the U.S. Constitutional promise of fair and equal protection of the Constitution for "ALL" people. "The State Affirms these Claims were known."  
See: Exhibit: Page 8 of 11, Conditional order of Dismissal.

Here the applicant will meet the burden of proving these grounds for relief could not have been raised in the initial PCR Application and is supported by S.C. Code Ann § 17-27-90 and not barred.

Pursuant S.C. Code Ann § 17-27-90, this Court may entertain this PCR application for grounds for relief applicant is asserting which for "sufficient" reasons was not asserted or was inadequately raised in the original, Supplemental, or Amended application.

Here applicants Claims were not asserted and were not adequately raised in his original, Supplemental, or amended application for the following reasons:

Pursuant Rule 71.1(d) SCRPC, Appointment of Counsel for Hearing. "... Counsel **"SHALL"** insure **"ALL"** available grounds for relief are included in the

application and "SHALL" "AMEND" the application if necessary." Mandatory Language "SHALL"

Under this rule the obligation is placed upon Counsel to insure that "ALL" available grounds for relief are included in the application. However Counsel failed to do so, and thus causing irreparable harm.

Applicant trusted in good faith in his Counsel to provide proper representation and to insure that "ALL" available grounds for relief were raised in the initial application as Rule 71.1(d) SCRPC Requires.

And now the States Contention that applicants failure to raise these grounds for relief constitutes as a waiver is preposterous in light of the fact that applicant trusted in good faith that Counsel would raise all available grounds as is required by Rule 71.1(d) SCRPC.

Therefore the assertion by the State in this regard amounts to a fundamental denial of Due process, depriving the applicant of "one full and complete bite at the apple" resulting in a gross miscarriage of Justice.

Furthermore regarding due diligence, what would be an adequate amount of time for the applicant, a lay person uneducated in matters of law, having only completed the 8<sup>th</sup> grade in public school, a 9<sup>th</sup> grade drop out, to comprehend the complexities of law in order to exercise due diligence?

The Applicant further would have been prohibited under the "Hybrid Representation" Rule from self representation and filing on his own after the appointment of Counsel. Represented by PCR Counsel George Sands

In this PCR action, the applicant points to "Non Frivolous Claims Supported by Evidence of Material Fact" (see attached exhibits submitted with applicants PCR, Exhibits 1A, 1B-6).

Factual Constitutional Rights Violations that for the purpose of dispensing with and upholding justice, an evidentiary hearing must be had for this honorable Court to determine and correct these errors which are shocking violations to the universal sense of justice.

### Ex Parte Communication

Applicants Exhibits display the discovery of "Ex Parte" Communication between Plea Counsel

Scott D. Robinson and the Court of Appeals,  
Only Discovered July 1, 2022 (See Exhibits  
1A, 1B-6).

24 MAY 29 AM 11:10:09  
Anderson, SC C000 CP/ES

The Applicant was not an included party where  
Plea Counsel Scott D. Robinson and the Court of Appeals  
Neglected to include the Applicant in the Chain of  
Communications, Evidenced by Each letter Submitted  
as Evidence of Material Fact, Exhibits of Evidence  
(See Exhibits 1A, 1B-6).

Further Evidence Showing where Plea Counsel  
Scott D. Robinson Sabotaged Applicant's Appeal by  
Incorrectly addressing his letter to the applicant that  
should have informed him he had 20 days to take up  
the appeal and submit his own issues for appeal.

Counsel Scott Robinson addressed the letter to the  
Applicant's name however to the wrong persons SCDC  
ID Number that was not the Applicant's. Applicant  
by law could not receive legal mail incorrectly  
addressed bearing a completely different Person's ID  
Not his client the Applicant but a different  
person entirely.

Applicant could not have received this.

Applicant was abandoned by Counsel in the appeal process a "Constructive Denial of Counsel"  
Applicant had no assistance of Counsel during the Appeal process and no aid of Counsel other than the Filing a Notice of Appeal.

Counsel Scott Robinson Filed No Briefs in this Case and is Confirmed by the Court of appeals letter Submitted (Exhibit 1B) Please see exhibit.

Applicant was deprived of his right to Appeal his Sentence or Conviction by Counsel Completely abandoning the applicants appeal, having Submitted a Responsal Letter to the Court of appeals that required he Submit any one arguable issue for appeal, Counsel Scott D. Robinson reply was "I feel there are no issues for appeal and Submitted No Briefs, Similar to a "No Merits" letter Such as in the Case of Anders v. California, 386 U.S. 738 (1967).

Due to these Ex Parte Communications, Applicant was Never included in the Chain of Communications between the Court of Appeals and Plea Counsel Scott D. Robinson, thus Applicant had No Knowledge of this issue and Constructive Denial of Counsel depriving him his right to Appeal

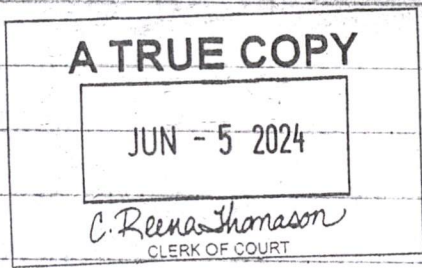
his Conviction or Sentence, thus violation the  
applicant's Constitutional Rights and an evidentiary  
hearing is a Necessity for the purpose of  
upholding and dispensing with Justice and  
Correcting this wrong, To protect the applicant's  
Constitutional Rights and to provide equal and fair  
protection of law. Failure to do so would result  
in a gross Miscarriage of Justice.

24 MAY 29 AM 11:10:21  
Anderson, SC DOC CP/68

Steven McElrath #328413  
Ridgeland C.I. / GB-7  
5<sup>th</sup> Correctional Road  
Ridgeland, S.C. 29936

May 30, 2024

Anderson Clerk of Court  
C. Reena Thomason  
P.O. Box 8002  
Anderson, S.C. 29622



Re: Steven C. McElrath VS S.C. 2023-CP-04-01390

I am requesting with all due respect, Copies of the Following :

- 1). Stamped, Clocked, filed Copy of Letter dated May 19, 2024, addressed to: (Clerk of Court, Attorney General, and Judge McIntosh) Where I was requesting disposition on My Motion To Enlarge.
- 2). Stamped Clocked Copy of My Motion Response to States Request for Dismissal with included Brief in Support of attached.
- 3). Stamped Clocked filed Copy of The disposition Response/Ruling to my Motion to Enlarge with newly Fixed date for filing and letter Notifying Applicant.

Thank you most Sincerely for your time and help  
with these requests.

Sincerely, Steven McElrath  
Steven McElrath #328413

24 JUN 4 AM 11:24:29  
Anderson, SC ODC, CP/OS

24 MAY 24 AM 11:07:26  
Anderson, SC CDC, CP/ES

Steven McElrath #328413  
Ridgeland C.I. / GB-7  
5 Correctional Road  
Ridgeland, S.C. 29936

May 19, 2024

The Honorable R. Lawton McIntosh  
Tenth Judicial Circuit Chief Administrative Judge  
P.O. Box 8002  
Anderson, S.C. 29622

Anderson Clerk of Court  
C. Reena Thomason  
P.O. Box 8002  
Anderson, S.C. 29622

Office of the Attorney General  
PCR Division - 10th Circuit  
P.O. Box 11549  
Columbia, S.C. 29211

Re: Steven C. McElrath #328413 v. S.C. 2023-CP-04-01390

This Applicant did Pro Se file in a timely manner  
his "Motion For Enlargement" for an enlargement of time -  
page 1 of 2

A TRUE COPY

JUN - 5 2024

C. Reena Thomason  
CLERK OF COURT

on the date of April 9, 2024 and was Stamp, clocked,  
dated by the Anderson Clerk of Court on April 15, 2024.

Applicant Forwarded a Copy also to the Attorney  
Generals office.

Applicant at this time has received "NO" Ruling or  
Response to his "Motion For Enlargement" of time, and  
any delay of response by the applicant in response to the  
Conditional order of dismissal is a result of waiting  
for a Ruling Response to his motion For Enlargement.

Applicant Requests a disposition on the above  
referenced Motion.

Sincerely,  
Steven C. McElrath #328413  
Steven C. McElrath

cc: Your personal Files

24 MAY 29 AM 11:09:34  
Printer's mark: SC000, CP/95

the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Evidence were Ex Parte Communication letters between the S.C. Court of Appeals and applicants Counsel (See Exhibits 1A, 1B-5)

Under the PCR Code applicant filed within one (1) year time limit. Exhibit 1B was received July 22, 2022 and applicant filed PCR on July 03, 2023.

Respondant failed to respond within the 60 days required under Rule 12(a) SCRCP. In Fact there was around a two hundred (200) day delay.

Applicant filed a Motion For Enlargement for extension of time on April 15, 2024 to which the Courts gave no response. Applicant has been awaiting a ruling of response.

Applicant Requests an evidentiary hearing to present the evidence supporting his claims. Applicant also requests that he be given the same exception as respondent in regards to to filing his response to respondents Motion request for dismissal exceeding the Standard time limits.






Applicant's request, and he has failed to file a response to the Conditional Order of Dismissal with specific reasons why the dismissal should not become final.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his application, and failed to respond with reasons the Conditional Order of Dismissal should not become final. Therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal in addition to the reasons set forth in this Final Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17 day of MAY, 2024.

  
\_\_\_\_\_  
R. LAWTON MCINTOSH  
Chief Administrative Judge  
Tenth Judicial Circuit

Anderson, South Carolina.

**CERTIFICATE OF SERVICE**

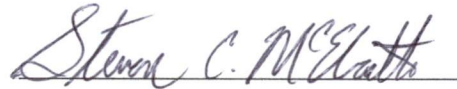
This is to certify that I Steven C. McElrath did serve my notice of appeal with statement of facts and questions on appeal by placing copies of the same in the United States postal service, by the notary of Ridgeland Correctional institution on this 17 day of June, 2024 with postage prepaid. Served to the following parties:

The South Carolina Court of Appeals  
office of the clerk  
1231 Gervais street  
Columbia, S.C. 29201


Anderson county clerk of Court  
C. Reena Thomason  
P.O. Box 8002  
Anderson, S.C. 29622

Office of the Attorney General  
PCR Division – 10<sup>th</sup> Circuit  
P.O.Box 11549  
Columbia, S.C. 29211

SWORN or affirmed to and subscribe before me this 17<sup>th</sup> day of June, 2024.



Steven McElrath

  
\_\_\_\_\_  
Demetrius A. Alton  
Notary Public

My commission expires: 8/7/2030

Dear clerk of Court,

June 17, 2024

Please find enclosed my notice of appeal along with certificate of service for filing in the above reference Case No. 2023-CP-04-01390. Will you please return a stamp clock dated filed copy for my personal file? I have included a prepaid envelope.

Thank you for your time and assistance in this matter.

Sincerely,

Steven C. McElrath  
Ridgeland C.I. / GB-7  
5 Correctional Road  
Ridgeland, S.C. 29936

**THE STATE OF SOUTH CAROLINA**

In The Court of Appeals

In the Supreme Court

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APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Tenth Judicial , Circuit Court Judge

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Case No. 2023-CP-04-01390

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\_\_\_State of South Carolina Respondent,\_\_\_

v.

\_\_\_Steven C. McElrath\_ Appellant. \_\_\_

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**NOTICE OF APPEAL**

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Steven C. McElrath appeals the order [Final Order Of Dismissal] of the Honorable R. Lawton McIntosh dated May 17, 2024. Appellant received written notice of entry of this order [Final Order Of Dismissal] on May 29, 2024.

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Steven C. McElrath #328413 Pro Se

Ridgeland C.I. / GB-7

5 Correctional Road

Ridgeland, S.C. 29936

## **Appendix**

1. Questions on appeal.
2. Statement of facts.
3. Certificate of service.
4. Letter requesting disposition on applicants Motion  
For Enlargement Extension of time.
5. Applicants Response to States Conditional order of Dismissal/  
order of Dismissal with Brief in Support of,

## **QUESTIONS ON APPEAL**

- I. Did the court error by issuing a Final Order of Dismissal while the Applicant's Motion for Enlargement was pending before the court?
- II. Was the Applicant's time to respond Tolloed by the timely filing of his Motion for Enlargement?
- III. Did the State error by not issuing a response and notice to be served to the Applicant with a newly fixed date to file his response to their Conditional Order of Dismissal?

## **STATEMENT OF FACTS:**

Now comes the applicant Pro se and presents the following statement of facts in the matter of this case (2023-CP-04-01390) for appellate review:

Applicant filed his (PCR) action on July 3, 2023. Respondent made their return Conditional Order of Dismissal on March 12, 2024 (194 days past the 60 days regulatory time frame set out in Rule 12(a), SCRCP). Applicant received service by mail on April 11, 2024 (282 days later).

Applicant filed his Motion For Enlargement on April 15, 2024 requesting an extension of twenty (20) days to respond to the states Conditional Order of Dismissal thereby Tolling his time for response. **(No notification response or ruling to Applicants Motion For Enlargement was ever given or received by the Applicant. And no notification as to any New Fixed date deadline for responding was ever given or received by the Applicant).**

Applicant then received notice by mail on May 16, 2024, dated May 6, 2024 of the state's proposed Order of Dismissal which asserted the Applicants failure to respond to the Conditional Order of Dismissal. Included was a copy from the Anderson clerk of Court of applicants stamped time clock filed Motion For Enlargement and **NO RULING, NOTICE, OR RESPONSE DENYING OR GRANTING THE APPLICANTS MOTION WITH ANY NEW FIXED DATE BY WHICH APPLICANT WOULD BE REQUIRED TO FILE HIS RESPONSE WAS EVER GIVEN.**

Applicant then wrote a letter mailed on May 19, 2024 with copies served to the Anderson clerk of Court, the Attorney general's office, and also to the honorable judge R. Lawton McIntosh explain the applicant filed a timely Motion for Enlargement requesting an extension of time and that any delay of a response to the state's conditional order of dismissal was due to having received no notice of a ruling or response to his motion and the Applicant concluded by requesting a disposition on his Motion For Enlargement of time so that he would know what his deadline for filing would be. **THE APPLICANT RECEIVED NO RESPONSE TO THIS LETTER FROM ANY OF THE PARTIES IT WAS MAILED TO AS LISTED ABOVE AND STILL NO NEW FIXED DATE NOTIFYING THE APPLICANT BY WHICH TIME HE WAS REQUIRED TO FILE.**

The Applicant then mailed his response (with brief in support of attached) to overcome the Conditional Order of Dismissal and the Proposed Order Dismissal, copies notarized and served to the clerk of court and Attorney general's office, **TO WHICH HE RECEIVED NO RESPONSE.** (Please review all attached exhibits of evidence of material fact included with PCR application). The applicant has shown sufficient reason with factual evidence: exhibits presented as evidence of material fact in support of why he should have been entitled to an evidentiary hearing.

The Applicant then received by mail on May 29, 2024 letter from the Attorney general's office dated May 24, 2024 with notice of the final order of dismissal signed by judge

McIntosh on May 17, 2024. Therefore, Applicant appeals this judgment because no disposition and notification was ever given to the Applicants Motion For Enlargement and no new fixed date and timeline by which he was required to file his response to conditional order of dismissal thus creating delay. If the applicant would have received a response to his motion he could have then requested an additional extension of time due to the circumstances of the institution and staff shortages which create security lockdowns which limits his access to the mailroom as well as supplies.

Steven C. McElrath #328413  
Ridgeland C.I./GB-7  
P.O. Box 2039  
Ridgeland, S.C. 29936

US POSTAGE WILHELM BOWEN  
ZIP 29936 \$002.83<sup>0</sup>  
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0000376436 JUL 02 2024

~~RIDGELAND CORRECTIONAL  
INSTITUTION  
JUL 01 2024  
Mailroom~~

RIDGELAND CORRECTIONAL  
INSTITUTION  
JUL 02 2024  
Mailroom

The Supreme Court of South Carolina  
Patricia A. Howard  
Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

**RECEIVED**  
JUL 12 2024  
S.C. SUPREME COURT

